

Filing # 73266242 E-Filed 06/07/2018 06:02:46 PM

IN THE CIRCUIT COURT OF THE 15<sup>TH</sup>  
JUDICIAL CIRCUIT, IN AND FOR, PALM  
BEACH COUNTY, FLORIDA

CIVIL DIVISION

CASE NO.:

O.M., as Parent and Natural Guardian of A.M.,  
a minor,

Plaintiff,

vs.

THE SCHOOL DISTRICT OF PALM  
BEACH COUNTY,

Defendants.

\_\_\_\_\_ /

**COMPLAINT**

COMES NOW, the Plaintiff O.M., as Parent and Natural Guardian of A.M., a minor, by and through his undersigned attorneys and sues THE SCHOOL DISTRICT OF PALM BEACH COUNTY, and further states as follows:

**ALLEGATIONS COMMON TO ALL COUNTS**

1. This is an action for damages that exceed the sum of fifteen-thousand dollars (\$15,000.00).
2. At all times material, the Plaintiff, O.M., as Parent and Natural Guardian of A.M., a minor, was a resident and citizen and domiciled in the state of Florida.
3. Neither Plaintiff nor his son are expressly named herein, and residential information of Plaintiff is not disclosed pursuant to privacy guarantee provided in the Individuals with Disabilities Education Act, 20 U.S.C. Sec.1400, as well as in the Family Educational Rights Privacy Act, 20 U.S.C. Sec.1232(g) and 34 C.F.R. Sec.99.

4. That at all times material hereto, the Defendant, THE SCHOOL DISTRICT OF PALM BEACH COUNTY, was and is a governmental entity doing business in Palm Beach County, Florida, and is *sui juris*.
5. That notice pursuant to Section 768.28(6), Florida Statutes, was properly given to all necessary authorities of the Defendant, THE SCHOOL DISTRICT OF PALM BEACH COUNTY, and the notice requirements and waiting provisions have been duly complied with. Copies of Notice Correspondence are attached hereto as "Composite Exhibit A."<sup>1</sup>
6. At all times material, the Defendant, THE SCHOOL DISTRICT OF PALM BEACH COUNTY, managed, controlled, and operated Olympic Heights Community High School in Boca Raton, Florida, at which Plaintiff, A.M., was enrolled as a student.
7. At all times material hereto, A.M., was a special needs student with a significant degree of autism and a significant degree of cerebral palsy resulting in a significant degree of cognitive functioning and motor control for whom an Individualized Education Program (IEP) was established and in effect. The IEP was created by, agreed to, adopted, and endorsed by the Defendant, THE SCHOOL DISTRICT OF PALM BEACH COUNTY. Further, the IEP provided notice to all concerned that A.M. had significantly delayed cognitive ability and physical capabilities such that he requires special care, protection, and attention. Specifically, the IEP requires that a para-professional remain immediately behind, alongside or within close enough proximity to A.M.—who has severely limited motor and muscular function and requires assistance to ambulate using a walker—to assist and protect him from injury. More specifically, the IEP requires a staff member *in close proximity* and

---

<sup>1</sup> The name and social security number of A.M., a minor, have been redacted due to privacy concerns.

specifically states that A.M. requires assistance *at all times* and *can never be left unattended at all for safety*.

8. At all times material, the Defendant, THE SCHOOL DISTRICT OF PALM BEACH COUNTY, owed a duty to the Plaintiff, A.M., to provide for his safety and wellbeing, keep him safe from harm, and to protect and warn the Plaintiff, A.M., of any dangers which the school and/or its employees and/or agents was or should have been aware.
9. At all times material, the Defendant, THE SCHOOL DISTRICT OF PALM BEACH COUNTY, owed a duty to the Plaintiff, A.M., to keep him safe consistent with the terms of the IEP agreed to, adopted, and endorsed by the Defendant, THE SCHOOL DISTRICT OF PALM BEACH COUNTY.
10. At all times material, the Defendant, THE SCHOOL DISTRICT OF PALM BEACH COUNTY, owed a duty to the Plaintiff, A.M. to reasonably and prudently supervise student activities while the school is entrusted with the student's care, implement plans to provide for the safety of its students who were enrolled at its schools, including the school at which the Plaintiff, A.M., a minor was enrolled, and control and supervise students when the students are on school property.
11. At all times material, the Defendant, THE SCHOOL DISTRICT OF PALM BEACH COUNTY, owed a duty to the Plaintiff, A.M., to exercise reasonable care in the operation of its schools, including Olympic Heights Community High School, and for the care and safety of its attending students, which duties included, among other things, the duty to provide adequate training for teachers and other personnel; supervise and control its

employees, agents and personnel; and take reasonable necessary action to protect students, including A.M., from danger and physical harm.

12. On August 11, 2017, the Plaintiff, A.M., while a student at Olympic Heights Community High School, was walking unattended using his walker and with no para-professional located behind him, when another student came into contact with A.M., resulting in significant injury to A.M.
13. All conditions precedent to the filing of this lawsuit have been met, satisfied and/or waived.

**COUNT I - NEGLIGENCE AGAINST**

**THE SCHOOL DISTRICT OF PALM BEACH COUNTY**

14. At all times material, the Defendant, THE SCHOOL DISTRICT OF PALM BEACH COUNTY, its employees, and/or personnel were negligent in one or more, but not limited to, the following respects:
  - a. Failing to protect the Plaintiff, A.M., from harm;
  - b. Negligently permitting the Plaintiff, A.M., to be left unattended and without a para-professional that the Defendant, THE SCHOOL DISTRICT OF PALM BEACH COUNTY, knew or should have known was likely to result in bodily harm to Plaintiff, A.M.;
  - c. Failing to follow the safety requirements of the IEP, which was specifically tailored to protect the Plaintiff, A.M., from harm;
  - d. Failing to reasonably and prudently supervise student activities;
  - e. Failing to implement plans to provide for the safety of its students, including the Plaintiff, A.M., a minor;

- f. Failing to adopt, implement and maintain proper safety procedures.
  - g. Failing to control and supervise students when the students are on school property;
  - h. Failing to provide adequate training for teachers and other personnel;
  - i. Failing to supervise and control its employees, agents and personnel;
  - j. Failing to take reasonable necessary action to protect students, including A.M., from danger and physical harm;
  - k. Failing to take reasonable steps to remedy the dangerous and/or hazardous condition described above;
  - l. Failing to exercise reasonable care under all of the relevant surrounding circumstances.
15. As a direct and proximate result of the aforementioned negligence, the Plaintiff, A.M., was seriously injured in and about his body, suffered disability, pain and suffering, mental anguish, emotional distress, aggravation of pre-existing condition, loss of capacity for the enjoyment of life, and Plaintiff, O.M., has incurred medical expenses in the care and treatment of said injuries; all of said injuries and damages occurred in the past and will continue permanently into the future.

This space left blank intentionally

WHEREFORE, the Plaintiff, O.M., as Parent and Natural Guardian of A.M., a minor, demands judgment for damages against the Defendant, THE SCHOOL DISTRICT OF PALM BEACH COUNTY, and further demands trial by jury.

Dated: 7th day of June, 2018

/s/ Timothy J. Murphy

---

Timothy J. Murphy, Esq., and  
Cyrus S. Niakan, Esq. for  
MURPHY NIAKAN ZUNIGA, PLLC d/b/a  
PERSONAL INJURY OF FLORIDA  
11211 Prosperity Farms Road, Suite B201  
Palm Beach Gardens, FL 33410  
PH: (561) 507-5700  
Fax: (561) 507-5701  
Email: tmurphy@pioffl.com  
cniakan@PIofFL.com  
eputney@PIofFL.com  
Florida Bar No. 020113  
Florida Bar No. 886041  
Attorneys for Plaintiff